



Billing Code 4333–15

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2016–N032; FXES11120800000–167–FF08ECAR00]

Endangered and Threatened Wildlife and Plants; Application to Amend Incidental Take Permit; Revised Diversified Pacific Low-Effect Habitat Conservation Plan and Associated Documents, City of Redlands, San Bernardino County, California

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have received an application from Diversified Pacific (applicant), to amend a 5-year incidental take permit (permit). The application includes the applicant's revised habitat conservation plan (HCP), as required by the Endangered Species Act of 1973, as amended (Act). If approved, the amended permit would authorize incidental take of the endangered San Bernardino Merriam's kangaroo rat (SBKR) in the course of routine construction activities associated with the development of residential houses in the City of Redlands. We invite public comment on the application for a permit amendment and the revised HCP, and on our preliminary determination that the revised HCP continues to qualify as

“low-effect” for a categorical exclusion under the National Environmental Policy Act.

To make this determination we used our low-effect screening form.

DATES: To ensure consideration, please send your written comments by [**INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**].

ADDRESSES: You may request a copy of the amended permit application, the low-effect screening form, and/or the revised HCP by email, telephone, fax, or U.S. mail (see below). These documents are also available for public inspection by appointment during normal business hours at the office below. Please send your requests or comments by any one of the following methods, and specify “Diversified Pacific Low-Effect HCP” in your request or comment.

- *Email:* karin_cleary-rose@fws.gov. Include “Diversified Pacific Low-Effect HCP” in the subject line of your message.
- *Telephone:* Karin Cleary-Rose, Palm Springs Fish and Wildlife Office, 760–322–2070 extension 206.
- *Fax:* Karin Cleary-Rose, Palm Springs Fish and Wildlife Office, 760–322–4648, Attn.: Diversified Pacific Low-Effect HCP.
- *U.S. Mail:* Karin Cleary-Rose, Palm Springs Fish and Wildlife Office, Attn.: Diversified Pacific Low-Effect HCP, U.S. Fish and Wildlife Service, 777 East Tahquitz Canyon Way, Suite 208, Palm Springs, California 92262.

- *In-Person Viewing or Pickup of Documents, or Delivery of Comments:*

Call 760–322–2070 to make an appointment during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Karin Cleary-Rose, Inland Division Chief, Palm Springs Fish and Wildlife Office; telephone 760–332–2070 extension 206. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Introduction

The Service issued an incidental take permit under section 10(a)(1)(B) of the Act to the applicant, Diversified Pacific, on August 21, 2015. The permit authorizes the applicant to take SBKR as a result of permanent impacts to 7.7 acres of habitat that the species uses for breeding, feeding, and sheltering. Take of SBKR is incidental to the applicant’s activities associated with the construction of residential houses in the City of Redlands, San Bernardino County, California. The site is located southwest and southeast of the intersection of Pioneer Avenue and Judson Street in the City of Redlands, San Bernardino County, California. The proposed project site is surrounded by residential development and a mix of active and abandoned citrus orchards. An active municipal airport is located approximately 0.25 mile northeast of the project site.

The original permit required the applicant to mitigate impacts to the SBKR by translocating HCP individuals (up to approximately 38 individuals) to a conserved

property within the Santa Ana River watershed, monitoring those translocated individuals for 5 years, and funding the perpetual management of 20.9 acres of high-quality SBKR habitat at the conserved 100-acre Redlands Conservancy property in Redlands, California. The applicant captured 41 SBKR from 4.4 acres before commencement of ground disturbance on the project site and translocated them to an area of the Cajon Creek Conservation Bank in the City of Muscoy, San Bernardino County, California, where they augmented a low-density population of SBKR. These animals will be monitored for 5 years, including annual reporting.

The applicant requests a permit amendment to expand the SBKR translocation program permitted in the HCP to allow for additional capture and translocation of SBKR from the project site to a Service-approved receiver site as described in the revised HCP. Upon inspection of the remaining undeveloped areas within the permit area, the SBKR biologist determined that 9.7 acres may still be occupied, for a total of 14.1 acres of occupied SBKR habitat. To minimize impacts associated with the expanded translocation program, the applicant will provide funding for the perpetual management and monitoring of 7.3 acres of additional occupied high-quality SBKR habitat in the City of Redlands, owned and conserved by the Redlands Land Conservancy into perpetuity as part of the revised HCP. This increase in the SBKR population across a larger portion of the permit area was unexpected given the overall poor quality of the conditions onsite and the limited number of SBKR previously trapped. The abnormally wet 2015 summer season allowed for increased seed production of summer annual plants. In turn, the SBKR on the project site experienced high reproductive success, which led to an expansion of distribution of SBKR on the site. Because the project site is within an urban

matrix and physically isolated from other areas that support SBKR, the project site still does not provide long-term conservation value for the species. Pursuant to the terms of the original permit, the applicant prepared a management plan for and provided financial assurances for long-term funding of the management of 20.9 acres of high-value SBKR conservation land at the Redlands Conservancy Conservation Area. Under the permit amendment, the applicant would fund an endowment account for management of an additional 7.3 acres of Conservancy lands, for a total of 28.2 acres of Conservancy lands with high-value SBKR land protected and managed in perpetuity.

We published a final rule to list SBKR as endangered on September 24, 1998 (63 FR 51005). The rule became effective September 24, 1998. Final designation of critical habitat was published on April 23, 2002 (67 FR 19812). A 5-year review of the species was published on May 21, 2010 (75 FR 28636).

Background

Section 9 of the Act (16 U.S.C. 1531–1544 *et seq.*) and Federal regulations (50 CFR 17) prohibit the taking of fish and wildlife species listed as endangered or threatened under section 4 of the Act. Take of federally listed fish or wildlife is defined under the Act as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed species, or attempt to engage in such conduct. The term “harass” is defined in the regulations as to carry out actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavioral patterns, which include, but are not limited to, breeding, feeding, or sheltering (50 CFR 17.3). The term “harm” is defined in the regulations as significant habitat modification or degradation that results in

death or injury of listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3). However, under specified circumstances, the Service may issue permits that allow the take of federally listed species, provided that the take that occurs is incidental to, but not the purpose of, an otherwise lawful activity.

Regulations governing incidental take permits for threatened and endangered species are at 50 CFR 17.32 and 17.22, respectively. In addition to meeting other criteria, activities covered by an incidental take permit must not jeopardize the continued existence in the wild of federally listed wildlife or plants.

Applicant's Proposal

The applicant requests an amendment to the 5-year permit under section 10(a)(1)(B) of the Act to allow for expanded translocation of SBKR from the project site to high-quality habitat receiver sites. Upon issuance of the current permit, and as a condition of construction within the project area, the SBKR biologist trapped 4.4 acres of the estimated 7.7 acres of occupied habitat and discontinued trapping as the maximum take of SBKR had occurred. Upon further inspection, the SBKR biologist determined that 9.7 acres of undeveloped portions of the project area remained occupied by SBKR, for a total of 14.1 acres of occupied SBKR habitat.

We think that the abnormally wet 2015 summer season allowed for increased seed production of summer annual plants. In turn, the SBKR on the project site experienced high reproductive success and recruitment of juveniles, which increased the total numbers of individuals on the site and led to an expansion of distribution of SBKR on the site.

Because the project site is within an urban matrix and physically isolated from other areas that support SBKR, we still believe that the project site does not provide long-term conservation value for the species.

If we approve the permit, the applicant would translocate all remaining SBKR to other Service-approved receiver sites from the remaining undeveloped portion of property as identified in the revised HCP. Translocation of SBKR from the project site is a requirement under the current permit as mitigation for impacts to SBKR, and it is recognized that moving the species off of the project site, which provides no connectivity to other SBKR populations, to approved receiver sites is a conservation benefit to the species. To mitigate take of SBKR at the project site, the applicant proposes the following mitigation strategy:

1. All SBKR captured prior to ground disturbance on the project site will be translocated to one or more Service-approved receiver sites in the Santa Ana River Watershed. These animals will be monitored for 5 years, including annual reporting.
2. The applicant will provide funding for the perpetual management and monitoring of 7.3 acres of additional high-quality occupied SBKR habitat in the City of Redlands, owned and conserved by the Redlands Land Conservancy into perpetuity as part of the revised HCP. In total for both the original HCP and the revised HCP, the applicant will fund the perpetual management and monitoring of 28.2 acres of SBKR habitat.

Proposed Habitat Conservation Plan Alternatives

In the revised HCP, the applicant considers alternatives to the taking of SBKR under the proposed action. Our proposed action is to issue an amended permit to the applicant, who would implement the revised HCP. If we approve the amended permit, additional take of SBKR would be authorized for the applicant's construction activities associated with the development of residential houses in the City of Redlands. The applicant's revised HCP identifies a no-build alternative that would not result in additional incidental take of SBKR; however, it is infeasible for the applicant to accept this alternative, as it would result in no development of the land and associated infrastructure improvements necessary to the City of Redlands and surrounding community. The revised HCP also examined participation in a regional HCP as an alternative to an individual HCP. This alternative plan is infeasible because there is currently no completed regional plan, and the timing for completion of a regional plan is unknown.

Our Preliminary Determination

We invite comments on our preliminary determination that our proposed action, based on the applicant's proposed activities to expand SBKR translocation minimization and mitigation measures, would have a minor or negligible effect on SBKR, and that the revised HCP qualifies as "low effect" as defined by our *Habitat Conservation Planning Handbook* (November 1996).

We base our determination that this HCP qualifies as a low-effect plan on the following three criteria:

1. Implementation of the HCP would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats;
2. Implementation of the HCP would result in minor or negligible effects on other environmental values or resources; and
3. Impacts of the HCP, considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not result, over time, in cumulative effects to environmental values or resources that would be considered significant.

As more fully explained in our associated low-effect screening form, the applicant's revised HCP qualifies as a low-effect HCP for the following reasons:

1. The project is small in size and the loss of this habitat would not jeopardize the continued existence of the SBKR.
2. The project site is not in designated critical habitat for the SBKR.
3. The translocation of additional SBKR off of the project site to conserved receiver sites would increase the local genetic diversity of SBKR at multiple locations in the Santa Ana River watershed, contributing to species recovery.

Therefore, our proposed issuance of the requested incidental take permit qualifies as a categorical exclusion under the National Environmental Policy Act, as provided by Department of the Interior implementing regulations in part 46 of title 43 of the Code of Federal Regulations (43 CFR 46.205, 46.210, and 46.215). Based on our review of public comments we receive in response to this notice, we may revise this preliminary determination.

Public Review

The Service invites the public to comment on the application to amend the permit, including the revised HCP, during the public comment period. Copies of the documents will be available during a 30-day public comment period (see **DATES**). If you wish to comment, you may submit your comments to the address listed in **ADDRESSES**. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Next Steps

We will evaluate the revised HCP and comments we receive to determine whether the application for a permit amendment meets the requirements and issuance criteria under section 10(a) of the Act (16 U.S.C. 1531 *et seq.*). We will also evaluate whether issuance of an amended section 10(a)(1)(B) incidental take permit would comply with section 7 of the Act by reinitiating intra-Service consultation. We will use the results of

the reinitiation, in combination with the above findings, in our final analysis to determine whether or not to issue a permit amendment. If the requirements and issuance criteria under section 10(a) are met, we will issue the permit amendment to the applicant for incidental take of SBKR associated with expanded translocation activities.

Scott A. Sobiech,
Acting Field Supervisor,
Carlsbad Fish and Wildlife Office,
Carlsbad, California.

[FR Doc. 2016-08345 Filed: 4/11/2016 8:45 am; Publication Date: 4/12/2016]